

OGC 79-07235  
6 August 1979

MEMORANDUM FOR: GEHA Board of Directors

STATINTL FROM : [REDACTED]  
Office of General Counsel  
SUBJECT : Legal Liability of the GEHA  
Board of Directors

1. This is in response to the Board's request for an opinion of this Office on the potential liability of the GEHA Board of Directors and also to advise the Board on the degree of protection presently provided by the Fidelity and Deposit Company of Maryland insurance now in existence.

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2. As described to the undersigned by [REDACTED] Chief, Insurance Branch, OP, and by the documents he provided, GEHA is organized as a District of Columbia nonprofit corporation run by a board of directors who are elected by the membership, which consists of Agency employees who have paid a \$1 membership fee.

3. GEHA offers both a health insurance program and a number of term life and specialized insurance programs. GEHA's medical insurance program is regulated by Federal law, 5 USC §8901 et seq., 5 CFR Part 890 and is underwritten by Mutual of Omaha under the supervision of the U.S. Office of Personnel Management. Mutual of Omaha offers GEHA's Board of Directors a number of coverage packages for which it charges premiums according to a price list. The Board then decides which benefits package it wants to offer to the GEHA membership. Premiums are paid through the Office of Personnel Management's Employee Health Benefit Fund, where charges set by statute are taken off for OPM's administration of the plan and for a statutorily mandated "contingency reserve"; in addition, GEHA is required by the statute to set aside monies for a "special reserve," 5 CFR §890.201(a) (8). Claims are submitted to GEHA by the covered employee through the Agency's Insurance Branch, where GEHA personnel determine whether a particular claim falls within the coverage of the insurance. In difficult cases, they consult with and defer to Mutual of Omaha's headquarters. The statute provides that a

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claimant who has been denied may appeal through OPM channels, with final review resting with the U.S. Court of Military Contract Appeals. GEHA's premiums are calculated by Mutual of Omaha based on GEHA's claims experience alone, its claims are not aggregated with those of other groups underwritten by Mutual of Omaha. However, sometimes Mutual misjudges the premiums which will be necessary for the coverage level the GEHA Board of Directors has chosen. In such cases, where claims paid exceed the premiums collected, the deficit is made up out of the following year's premium or, in extraordinary cases, out of more than one succeeding year's premium. Any major changes in coverage, premiums, or accounting procedures have to be approved by OPM.

4. With the group term life insurance offerings and the specialized insurance programs, no such OMB supervision exists. There, GEHA acts as the member's middleman in purchasing policies and processing claims. OPM?

5. The Fidelity and Deposit Company of Maryland insurance coverage presently carried by the Board is not a general liability policy and provides only limited amounts of coverage (\$10-15,000) against actual misappropriation (theft) of GEHA funds by GEHA employees or by members of the Board. It does not protect members of the Board against possible suits alleging misfeasance or malfeasance and accordingly, it is necessary to examine kinds of action for which members of the Board could possibly be liable and the law as it applies to same.

6. The Board's legal responsibility is to safeguard GEHA's monies, maintain adequate but not excessive reserves, wisely and prudently invest such reserves, offer sufficient but affordable coverages through responsible underwriters, comply with OPM requirements where applicable, and promptly honor meritorious claims. With regard to most of these duties, only members of GEHA have standing to sue. However, it is conceivable that an underwriter might sue on an allegation of fraud by GEHA in presenting the facts of a claim.

7. Any such suit would be primarily against the members of the Board of Directors individually for breach of fiduciary duty under state law. A thorough plaintiff's lawyer might try to join the United States and Board of Directors in their official capacity under the Federal Tort Claims Act, 28 USC §2671, et seq., alleging that GEHA is an instrumentality of the U.S. Government. On balance I do not think this position would prevail and therefore, only state law on the fiduciary duty of trustees applies.

8. The common law fiduciary standard of care is:

...that of an ordinary prudent man in the conduct of his private affairs under similar circumstances, and with a similar object in view. 76 Am Jur 2d, Trusts, §§326, 418.

The decisions of a trustee are looked at prospectively, not retrospectively: the question is whether the judgment the trustee made with the information then reasonably available to him fell below the legal standard of care.

9. With regard to whether GEHA can pay the legal defense fees of directors who are sued for alleged breach of fiduciary duty, District of Columbia law permits the payment of legal defense fees provided that the director is not found negligent by a court of law:

Each corporation shall have power:

\* \* \*

--to indemnify any director or officer or former director or officer of the corporation... against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise; D.C. Code § 29-1005(n) [nonprofit corporations].

See also Fletcher Cyclopedia on Corporations §1344.

10. In conclusion, so long as the Board continues to exercise sound and conservative business judgement, follows correct actuarial calculation methods, consults with recognized

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1/ GEHA is a D.C. nonprofit corporation; however, even if it were determined to be a D.C. business corporation, the law would be the same, since the statutory language on this point is identical for nonprofit and for business corporations. D.C. Code § 29-904(p) [business corporations].

investment advisors from respected investment houses, makes investment decisions and decisions on how many benefits to offer for the premium dollar with prudence, places careful administrative controls over handling the money and the negotiable instruments involved, it is my judgment that the likelihood of a successful suit being brought is remote. The Board's best protection continues to be continued oversight by GEHA's auditors and the advice of its legal advisor. However, bearing in mind the vagaries of courts, GEHA's directors should be eligible to have GEHA pay any eventual legal fees, and in those cases which the directors prevail on the merits in a lawsuit.



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Approved For Release 2002/01/08 : CIA-RDP85-00375R000400050006-0

# Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND BALTIMORE, MD. 21203

## Application Questionnaire for a Comprehensive Dishonesty, Disappearance and Destruction Policy or for a Blanket Crime Policy

Application is hereby made by **Government Employees Health Association**  
**P. O. Box 463** Washington D.C. (Name of Applicant) **20044**

(Street) (City) (County) (State) (Zip Code) (herein called the Applicant)

for insurance under each of the following Insuring Agreements opposite which an amount is stated, to become effective or to be continued  
as of 12:01 a. m. on **May 9, 1981** (Month, Day, Year), as follows:

## Coverage and Amount of Insurance Desired

Amount of  
InsuranceAmount of  
Deductible

<b>COMPREHENSIVE 3-D POLICY</b>	<b>Insuring Agreement I</b> (Employee Dishonesty Coverage) <input checked="" type="checkbox"/> Form A <input type="checkbox"/> Form B <input checked="" type="checkbox"/> \$ 10,000	\$
	<b>Insuring Agreement II</b> (Loss Inside the Premises Coverage) <input type="checkbox"/> Money & Securities <input checked="" type="checkbox"/> \$ 15,000	\$
	<b>Insuring Agreement III</b> (Loss Outside the Premises Coverage) <input type="checkbox"/> Securities Only <input checked="" type="checkbox"/> \$ 15,000	\$
	<b>Insuring Agreement IV</b> (Money Orders and Counterfeit Paper Currency Coverage) <input type="checkbox"/> Money & Securities <input checked="" type="checkbox"/> \$ NIL	\$
	<b>Insuring Agreement V</b> (Depositors Forgery Coverage) <input type="checkbox"/> Securities Only <input checked="" type="checkbox"/> \$ NIL	\$

**BLANKET CRIME POLICY.....(All Agreements as Above)**

Premium Payable: Three years prepaid  Three years in equal installments  Annually

(a) Nature of Applicant's business: (b) Applicant's predominant business or activity (c) Nature of products or services of Applicant's predominant business or activity (d) The Applicant is (e) Give number of additional premises operated (f) Date business established (g) If any Employee owns over 50% of stock of the Applicant, give name and %.	(a) Employee organization providing Life & Health Benefits (b) Manufacturer or Processor <input type="checkbox"/> Wholesaler or Distributor <input type="checkbox"/> Retailer or Service <input type="checkbox"/> Other - Describe _____ (c) (see A) _____
	(d) Individual <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> (e) Complete Supplemental Application for each additional premises (f) 1948 (g) N/A

Internal Controls	
(a) Is there an annual audit by an independent CPA or Public Accountant? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(b) If "Yes", is it a complete audit made in accordance with generally accepted auditing standards and so certified? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(c) If the answer to (b) is "No", explain the scope of the CPA or Public Accountant's examination: _____	
(d) Are all premises audited? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(e) Are audit reports rendered directly to the individual owner if Applicant is a sole proprietorship, to all partners if Applicant is a partnership, or to the Board of Directors if Applicant is a Corporation? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(f) Who performs inventory of merchandise? Employees How often? Monthly	
(g) Are bank accounts reconciled by someone not authorized to deposit or withdraw therefrom? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "Yes", how often?	
(h) If "No", by whom reconciled? Accounting Technician How often? Monthly	
(i) Is countersignature of checks required? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "No", describe on a separate sheet the procedure followed to prevent unauthorized issuance of checks. Checks are kept in restricted vault; unauthorized issuance controlled	
(j) Are securities subject to joint control by two or more responsible employees? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> By Corp. officers	
(k) Is endorsement of checks limited to endorsement for deposit to the credit of the Applicant only? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If "No", explain on a separate sheet why this requirement cannot be made	
(l) Is the bank account in which all deposits are made in the name of Applicant? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Employee Supervision	
(a) Are outside employees handling money required to make daily remittances? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
(b) Are statements to outside accounts mailed direct at least monthly? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(c) Are samples carried by any employees? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "Yes", explain on a separate sheet the method followed to insure that correct accounting is made.	
(d) Are buyers employed? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "Yes", explain on a separate sheet the extent of their authority and how they are checked and supervised.	

Give total number of Locations (other than Home Office)	
(a) If Applicant is engaged in retail trade or personal services or operates a collection agency, motion picture or drive-in theatre or amusement enterprise;	(a)
(b) If retail locations only and Applicant is a manufacturer, processor, wholesaler or distributor;	(b)
(c) If Applicant is a Pawn Broker, Factor, Currency Exchange, Check Cashier or a Personal Finance Company or other Loan Company operating under Uniform Small Loan or similar legislation (including Chattel Loan Companies, Benevolent, Charitable, Prudential or Remedial Loan Associations and also Industrial Loan Companies in the State of Washington).	(c) N/A

Questions 5-8 need only be answered as of inception date of the Policy.

Losses during past 6 years by Employee Dishonesty, Forgery, Burglary, Robbery, Theft, Disappearance, Destruction. Check if none <input checked="" type="checkbox"/>			
Description of Loss	Date Loss Discovered	Amount	Describe Corrective Measures Taken
NONE			

Prior Coverage to be superseded - Check if none <input checked="" type="checkbox"/>			
Form of Bond or Policy	Effective Date	Amount	Name of Insurer

7. Has any Employee Dishonesty, Forgery, Burglary, Robbery, Theft, Disappearance or Destruction Insurance carried by the Applicant been declined or canceled within the last six years by any insurer? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If "Yes", explain.
8. (a) Does the Applicant arrange to have new Employees complete personal applications supplied by the Company including therein a record of previous employment? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (b) Briefly explain the extent of investigation made by the Applicant at the time of employment Rigorous Governmental investigation

9. Is there likely to be a substantial increase in the number of Employees or of premises during the premium period by reason of: (a) Seasonal activity or other circumstances peculiar to Applicant's business? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> (b) Expansion of Applicant's business? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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## **Definition of Employees**

"Employees" as used in the Policy means all of the natural persons (except directors or trustees of the Applicant, if a corporation, who are also officers or employees thereof in some other capacity), while in the regular service of the Applicant in the ordinary course of the Applicant's business during the Policy Period, and whom the Applicant compensates by salary, wages or commissions, and has the right to govern and direct in the performance of such services, and who are engaged in such service within any of the States of the United States of America, the District of Columbia, Virgin Islands, Puerto Rico, Canal Zone or Canada, but not to mean brokers, factors, commission merchants, consignees, contractors or other agents or representatives of the same general character.

### **Classification of Employees**

**CLASS 1 EMPLOYEES (as classified by position)**

- (a) **Executives, officials and all other employees, except Class 2 Employees, who, as a part of their regular duties, handle or have custody of money, securities or merchandise** (the latter meaning commodities customarily traded in by the Applicant), **including in any event all occupants of positions listed below.**

Note: Even though they may, on occasion, handle money, securities or merchandise, the following positions should not, for that reason, be classified as Class 1 Employees: inside salesmen (except those of automobile dealers), inside messengers, clerks, typists, stenographers and business machine, elevator and telephone operators, foremen, factory workers, janitors, porters, laborers, mechanics and other similar positions.

\* For certain types of business these positions are subject to Class 2 Ratings as indicated below.

**CLASS 2 EMPLOYEES**

- b) This Class embraces Canvassers (for all Insureds) Chauffeurs, Collectors, Demonstrators, Drivers, Drivers' Helpers (other than Drivers' Helpers for Brewery Companies who are Class 1 Employees), certain Janitors and Superintendents of Buildings, Outside Salesmen, whether or not they collect and other similar positions. The Class 2 employee classifications apply to those Insureds whose business description appears in the Fidelity Industrial Class Code & Rate Modification Table with an asterisk preceding the Class Code number.

Total Class? 46

**Total Number of all Employees ...**  
**this Application-Questionnaire**

11. If additional Dishonesty Coverage is desired on Employees in certain positions included in section 10 complete the following:

**Name of Employee** \_\_\_\_\_ **Position** \_\_\_\_\_ **Location** \_\_\_\_\_ **Amount of additional coverage desired on such employee** \_\_\_\_\_

If the Applicant will furnish the following information, the Company will be in a position to suggest a minimum amount of fidelity coverage to be carried by the Applicant.

Total Current Assets (cash, deposits, securities, receivables, goods on hand, etc.)

Goods on Hand (raw materials) Approved For Release 2002/01/08 : CIA-RDP85-00375R000400050006-8



18. Not more than one Messenger or armored motor vehicle shall have custody of the insured property outside the Premises at any one time, unless otherwise stated herein;

Money and Securities while being conveyed outside the Premises and protected as follows, shall be conveyed by armored motor vehicle company or Messengers, including paymasters, collectors, deliverymen, salesmen:

**NOTE: For More Than Three Messengers or Armored Motor Vehicles Per Premises Use "Supplemental Application"**

No. 1	No. 2	No. 3
Messenger <input checked="" type="checkbox"/> Armored Motor Vehicle <input type="checkbox"/>	Messenger <input type="checkbox"/> Armored Motor Vehicle <input type="checkbox"/>	Messenger <input type="checkbox"/> Armored Motor Vehicle <input type="checkbox"/>

- |  | Vehicle [ ] | Vehicle [ ] | Vehicle [ ] |
|--|-------------|-------------|-------------|
| (1) Exposures outside the Premises:                                |             |             |             |
| (a) Money excluding Payroll Money                                  | \$ .....    | \$ .....    | \$ .....    |
| (b) (1) Securities (Stocks, Bonds, etc.)                           | \$ .....    | \$ .....    | \$ .....    |
| (2) Checks received from others                                    | \$ .....    | \$ .....    | \$ .....    |
| (c) Payroll Money  | \$ .....    | \$ .....    | \$ .....    |
| (d) Checks received from others (not retail)                       | \$ .....    | \$ .....    | \$ .....    |
| (2) The number of guards with each is                              |             |             |             |
| (3) Type of conveyance used by each is                             |             |             |             |
| (4) Construction of messenger safe, bag or satchel used by each is |             |             |             |

**UNDERWRITING DATA FOR DEPOSITORS FORGERY COVERAGE**

19. If Comprehensive 3-D Policy, coverage under Insuring Agreement V for acts of Employees is to be  included or  excluded in the amount of \$8.

9. If coverage is desired for personal accounts of officers or partners of the Applicant, complete the following:

Name \_\_\_\_\_ Position \_\_\_\_\_ Amount of Coverage \_\_\_\_\_

(Use Separate Sheet of Paper if Necessary)

The Employees of the Applicant have all, to the best of the Applicant's knowledge and belief, while in the service of the Applicant always performed their respective duties honestly. There has never come to its notice or knowledge any information which in the judgment of the Applicant indicates that any of the said Employees are dishonest. Such knowledge as any officer signing for the Applicant may now have in respect to his own personal acts or conduct, unknown to the Applicant, is not imputable to the Applicant.

It is understood that the first premium upon the Policy applied for, and subsequent premiums thereon, are due at the beginning of each premium period, that the Company is entitled to additional premium because of any unusual increase in the number of Employees and that the Applicant agrees to pay all such premiums promptly.

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EMPLOYEE ACTIVITY ASSOCIATION, INC.  
Meeting of the Board of Directors  
6 February 1980

A meeting of the Board of Directors of the Employee Activity Association, Inc., was convened on Wednesday, 6 February 1980, at 10:00 a.m. in Room 5E-62, Headquarters, with the following present:

Directors

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3479

7536

6616 6045  
6715

sident  
Vice President  
Secretary NO  
Treasurer NO

Officers

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tant to the President  
Executive Officer  
Assistant to the Executive Officer

EAA Representatives

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istant to the EAA Coordinator  
EAA Accountant

EAA Legal Advisor

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STATINTL [REDACTED] opened the meeting and as the first item of business the Board reviewed the financial statement for 1979. While the net gain was down from 1978, it was considered reasonable in view of the special sale which had been held in the second quarter to liquidate slow moving items and the loss of interest income because of the significant expenditure for the recreation facility.

The new activities were then considered for EAA participation. The first involved mini-computers and may be offered as an instructional program or possibly form as a club. With regard to the other activity, approximately 30 employees have indicated their interest in forming a Drama Club. The Board approved both of these activities.

As the next item of business, the following 1980 budgets were presented, discussed, and approved by the Board:

Social-Cultural  
Athletic  
Self-Improvement  
Special Events  
NPIC

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[REDACTED] then presented for consideration the attached Budget Supplement which involves ball-field maintenance and improvements. After thorough discussion, the Board approved the following actions:

1. Improve drainage, grade and repair Field No. 4. Logistics is working on a project in the same area which may alleviate the drainage problem. The Board approved an expenditure of approximately \$1,900 with the understanding that EAA will defer to Logistics wherever possible.
2. Grading and gravel warning strip near outfield fence of Field No. 4 at an approximate cost of \$1,375.
3. Extension of gravel parking area of Field No. 4 at an approximate cost of \$650.
4. Fill, grade, and treat infields of Park Service Fields No. 1, 2, and 3 at an approximate cost of \$1,500. Although these fields may be turned over to Fairfax County at some time in the future, they are necessary for our 1979 softball program. The field repair is required on almost an annual basis in order to protect the players and is not a long-term investment or permanent improvement.

The Board expressed concern that the likely turnover of Park Service fields to Fairfax County could seriously curtail future EAA athletic programs. In order to consider possible alternatives, the Executive Officer was asked to obtain cost estimates for providing lights for EAA Field No. 4 and estimates for construction of a second EAA softball field. The Executive Officer was also asked to review with Logistics the trash collection problem at Field No. 4.

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[REDACTED] advised the Board of discussions he had with an Agency employee, [REDACTED] regarding a discount furniture business. Circulars for this business had been placed in the EAA display area in front of the ticket office without approval. When they were noticed, the circulars were removed. [REDACTED] called complaining about the removal because he believed that the EAA Board had approved the arrangement. He was told that this was not the case and that the Board would have to consider the subject of EAA providing product information to its members.

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EAA is presently making available Group purchase booklets from National Tire Wholesale, Universal Tire, and Nationwide. These firms have indicated that individuals who are members of a participating group can obtain discounts that are not available to the general public. This is particularly attractive to EAA because the booklet can be used to obtain the discount without identifying the individual as an Agency employee. By providing access to such discount programs, EAA hopes to attract new members and benefit current members. In order to emphasize the group participation aspects and avoid confusion regarding commercial advertising in a Federal building, EAA is now controlling distribution of the tire booklets through the EAA Coordinator's office and making them available only to EAA members. The United Buyers program, which offers new car discount purchase arrangements, has always been maintained in the Coordinator's office and limited to EAA members. These are the only discount programs currently offered through EAA.

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[REDACTED] commented that from a legal standpoint EAA is occupying Federal space and that it does so under what amounts to a license to use this space for the limited purposes of the Association. Individuals and commercial organizations cannot make a general solicitation in Federal buildings. EAA could, however, offer various programs to its membership provided they are within the overall charter.

(3) It was suggested that the Coordinator have a sign made to display on the EAA Board indicating that discounts are available to members on tires, automobiles, etc., and to see the ticket counter representatives for details. With regard to new discount programs, it was agreed that they should offer a benefit not available to the general public, be worthwhile in nature, not compete with the EAA store and that each case should be thoroughly investigated before offering it to the membership.

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